

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO DELA CRUZ Y LAOANG, ACCUSED-APPELLANT.

G.R. No. 108180. February 08, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The accused-appellant was charged with the crime of rape with homicide in Criminal Case No. L-4227 of Branch 37 of the Regional Trial Court of Lingayen, Pangasinan, in an information[1] dated 25 April 1990, the accusatory portion of which reads as follows:

“That on or about the 19th day of March, 1990 in the early morning, in barangay Pogombo, municipality of Aguilar, province of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of the nighttime and of the uninhabited place, with the use of force and violence against person, did then and there wilfully, unlawfully and feloniously have sexual intercourse with Merly Caburnay y Lozada, a girl under twelve years of age, against her will and consent; and on the occasion of said rape, the above-named accused, with intent to kill, taking advantage of superior strength and with the use of hard objects, did then and there wilfully, unlawfully and feloniously attack, hit and strike the said Merly Caburnay, inflicting upon her the following injuries, to wit:

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Contusion hematoma extending from the temporal, pre-auricular, mandibular and zygomatic areas, left;

-

Contusion hematoma, upper and lower lips, with 1 cm laceration, lower lip, right;

-

Periorbital hematoma, left;

-

Multiple linear abrasions and excoriations found at the different parts of the body, such as the chest, back, both upper and lower extremities;

-

The entroitus revealed a second degree laceration, 6 o'clock position, 2 cms. long, 1 cm deep and 0.5 cm wide;

-

Creation of a burr hole traversing the scalp, periosteum and meninges at the left parietal area, showed a free-flowing dark bloody discharge,

which injuries directly caused her death, to the damage and prejudice of the heirs of Merly Caburnay.

CONTRARY to Article 335, as amended, of the Revised Penal Code.”

The accused pleaded not guilty at his arraignment on 8 November 1990.[2] After trial on the merits, the trial court promulgated on 16 July 1992 a decision[3] convicting the accused of the crime charged and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P50,000.00.

The facts of the case are summarized in the People’s brief[4] in this wise:

“In the early dawn of March 19, 1990, Cesar Soliven was standing at the corner of the McArthur Highway and Felomina St. in Aguilar, Pangasinan waiting for a ride back to his residence in Barangay Pogombo after spending the night around the poblacion during the eve of the town’s fiesta. (pp. 3-4, tsn, May 9, 1991). While standing at the aforementioned place, a man smelling of liquor, who was identified later on as Eduardo dela Cruz (appellant herein), stood beside him. Subsequently, Merly Caburnay, a neighbor of Soliven, passed by, proceeding towards the direction of Barangay Pogombo. Appellant, who appeared drunk, followed the girl but Soliven did not mind. Instead, he went home (id.).

Early the following morning, Soliven, while in his house, heard the cry of Carmelita Caburnay, mother of his neighbor, Merly. When he went out of the house, he learned that Merly was raped and her dead body was found in a nearby ricefield (pp. 5-6, tsn, id.).

Prior to Soliven’s knowledge of the happening, Mayor Domingo Madrid of Aguilar was already informed of the discovery of the dead body of the victim and was able to proceed immediately to the crime site. There, the Mayor was informed that a man walking suspiciously has [sic] just left the place. So, Mayor Madrid lost no time, took a tricycle and overtook the man. The man was identified as appellant and he was found with dirty clothes, his maong pants torn and his t-shirt stained with blood. He also bore scratches on his neck and arms. When asked to explain his dirty appearance and the presence of dried straws of palay at the back of his pants, appellant only answered that on his way home, he felt sleepy and lied down for a while on the field. Because of his unsatisfactory explanation, the police arrested him on that same morning on suspicion that he was the perpetrator of the crime. (pp. 4-8, tsn, March 14, 1991).

Four days later, Cesar Soliven was invited to the police headquarters for the purpose of identifying the man he saw in the early dawn of March 19, 1990 following the victim Merly Caburnay. Standing in front of the prison cell, Soliven pointed to appellant, who was among the four men inside the cell, as the person he saw (pp. 5-6, tsn, May 9, 1991).

The body of Merly Caburnay was autopsied by Dr. Wilma Flores-Peralta and her findings showed that the victim was indeed raped and that she died of cardio-respiratory arrest after a struggle (pp. 3-4, tsn, April 4, 1991). x x x

x x x

On the other hand, appellant was also examined by the same physician upon request of P/Lt. Loreto Malaybalay. Her findings were reduced to writing (Exh. D) as follows:

x x x

- Linear excoriations, 4 cms. long, scapular area, left.
- Confluent linear abrasions, 3 cms. long, middle third, forearm, right.
- Confluent linear excoriation and abrasions, lower third, forearm, right.
- Linear abrasions, upper third, lateral aspect, arm, left.
- Linear abrasions and excoriations, posterior aspect, upper third, arm, left.

- The suspect is wearing a pair of old maong pants, with torn or partially torn middle third, anterior aspect. The lateral aspect of the torn left side showed a fresh or new blood stain. That particular pair of pants is dirty, soiled and with scattered greenish stains.
- The suspect's T-shirt is dirty with a yellowish-brown stain on the anterior aspect, right upper portion.

x x x

The above findings concerning the presence of blood on the maong pants and T-shirt of appellant was [sic] confirmed by the NBI in its biological report (Exh. F) to be that of human blood.”[5]

The victim, Merly Caburnay, was at the time of the crime only ten years old[6] while the accused was forty-eight years old.[7]

In his defense, the accused asserted that on 18 March 1990 he was invited by one Andoy Versoza, his landlord, to cook and prepare food for the latter's visitors. At around 6:00 p.m. of the said date, he, together with his two aunts, went around the plaza and watched some shows until midnight. Thereafter, he drank a bottle of gin and another bottle of beer until 1:00 a.m. of the following day. They then strolled about the plaza for two hours. Afterwards, they rested for awhile near the highway beside the church and at about 5:00 a.m., they attended mass. When he was advised by his aunts to go home, he decided to walk because he had no more money. Along the way, he was arrested by the police for raping and killing Merly Caburnay. He vehemently denied having committed the crime. He likewise claimed that there were no rice stalks at the back of his pants when he was arrested.[8]

Although the prosecution did not present any eyewitness, the trial court found the circumstantial evidence as sufficient for conviction. Thus:

“The aforestated circumstantial evidence presented by the prosecution consist [sic] of first, the convincing testimony of Cesar Sagun Soliven that at about 2:30 in the early dawn of March 19, 1990, he saw the accused follow the victim, Merly Caburnay as the latter passed by Soliven. Merly was walking along the National Highway southward towards the direction of Barangay Pogombo, her residence, which is about one kilometer from the Poblacion of Aguilar, Pangasinan. Second, the lifeless and naked body of Merly Caburnay was found sprawled on a ricefield in Pogombo, one hundred meters from the National Highway. Third, Mayor Madrid went after and overtook the accused as the latter was walking away from the place of the incident, looking suspicious. Fourth, when confronted by Mayor Madrid, the accused was acting suspiciously and was wearing a dirty and torn pants with bloodstains and with dried palay stalks sticking at the back and dirty T-shirt with bloodstains and had scratches on his neck and arms. The cadaver of Merly Caburnay was found lying on the ricefield with straws of dried palay stalks sticking on the body. The injuries on the person of the accused are confirmed in the aforequoted Exhibit “B”, and the bloodstains are confirmed to be of human blood in Exhibit “F”. Fifth, the accused, who was overtaken by Mayor Madrid was later on positively identified by Cesar Sagun Soliven among the four prisoners, as the man whom he had seen at 2:30 o'clock in the early morning of March 19, 1990, in the Poblacion of Aguilar, Pangasinan following the victim as the latter was walking towards the highway going to Pogombo.”[9]

It rejected the defense put up by the accused thus:

“First, the physical appearance of the accused when he was overtaken by Mayor Madrid at past 6:00 o'clock in the morning of March 19, 1990, as he was walking along the highway from the scene of the crime -- with torn pair of maong pants with human blood on them, dirty T-shirt likewise with human blood, the visible scratches on his neck and arm, the dried stalks of palay still attached to the back of his pants, belie his claim that he had just come from the church in the Poblacion of Aguilar, Pangasinan, where he allegedly attended Mass with his two aunts. He could have removed, as he had sufficient time to at least remove, the dried rice

stalks from his pants and removed the fresh dried blood from his neck and arms. Second, he said he attended Mass with his two aunts, after lying for a while near the church along the road, not riceland, and after the Mass he was sent home by them. This conflicts with his explanation that the reason why he had dirty pants with dried stalks of palay still sticking at the back of his pants was because he just woke up [after] sleeping on the ricefield. Third, the scratches on his arms and neck, which are described in Exh. "B" prepared by Dr. Wilma Flores-Peralta, could not have been merely acquired by the accused when he lied down on a stony place in the ricefield. The nature and locations of the scratches on the body of the accused show that he acquired them in a struggle. It is to be noted that from the findings of Dr. Peralta in her autopsy of the cadaver of Merly Caburnay that night, the injuries inflicted on her body showed that there was [a] struggle before the victim was killed." [10]

The accused now comes before us in order to seek the reversal of the judgment of conviction. He faults the trial court for relying upon the circumstantial evidence for the following reasons: (a) Soliven's testimony is far from credible for Soliven could not have waited for a ride home at 2:30 a.m. of 19 March 1990 since "[t]here is no more ride home to the barrio that can be found at that time"; (b) "Merly's cousin and aunt who were her companions at the town fiesta of Aguilar were never presented by the prosecution to explain why she was alone still walking the streets of Aguilar at 2:30 A.M."; (c) "assuming that Merly was last seen being followed by the accused, that doesn't necessarily mean that he raped and killed her" considering that "it has not been established that he was indeed following her and with malice aforethought"; [11] (d) that he was seen walking away from the scene of the crime and looking suspicious does not warrant a conclusion that he was the rapist-killer for "people's interest vary and dela Cruz was not the type to be interested in a killing. Certainly, it was more important for him to go home and get some rest in his own bed"; [12] (e) the NBI forensic chemist, Edwin C. Purificando, who tested the pants with bloodstains, never testified in court regarding his findings contained in Exhibit "F," thus the said evidence is hearsay; and (f) it does not likewise follow that he was involved in a struggle just because he "had scratches on his neck and arms." [13]

We find the appeal and the arguments in support thereof to be devoid of merit. The challenged decision, being in accord with the facts and the law, must then be affirmed in its entirety.

The accused was positively identified by Soliven as the person who followed the victim on that early morning of 19 March 1990. The trial court gave full faith and credit to Soliven's testimony and identification of the accused. It is axiomatic that the trial court's evaluation of the testimony of a witness is accorded with the highest respect because it is the trial court that has the direct opportunity to observe the witness on the stand and determine if they are telling the truth or not. The exceptions to this rule are when such evaluation was reached arbitrarily [14] or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could have affected the result of the case. [15] None of these exceptions exists here.

Considering the circumstances of this case, we do not find as incredible the testimony of Soliven that he was waiting for a ride back home at 2:30 a.m. of 19 March 1990. As aptly stated by the People in its brief:

"[T]hat fateful night was just a couple of hours after the eve of the town fiesta and by appellant's own admission, there were still many people roaming around the town plaza. In fact, the evidence show [sic] that the Mayor of the town was able to get a tricycle during that early morning which he used in overtaking appellant." [16]

Besides, the defense did not offer any evidence to prove that no transportation was available at that time. On the contrary, the accused admitted that it was the fiesta of Aguilar, Pangasinan, that there were "shows in the plaza," [17] and that he roamed about for "two (2) hours" [18] after 1:00 a.m. It would, therefore, be logically expected that means of transport were available for the people who watched the shows and strolled about the plaza.

Moreover, the defense has not shown any improper or ulterior motive on the part of Soliven for testifying against the accused. It is settled that where there is no evidence, and nothing to indicate that the principal witness for the prosecution was actuated by any improper motive, the presumption is that he was not so actuated and his testimony is thus entitled to full faith and credit.[19]

Nor is the non-presentation of the victim's companions of any help to the cause of the accused. In the first place, it was never established that the two companions were with the victim when she was on her way home or when she was raped and killed. It was duly established that, after obtaining permission from her mother, she went "to the fiesta in Aguilar" with her cousin and her mother's sister-in-law,[20] and that immediately before the incident the victim was walking alone but "was following persons." [21] Accordingly, her two companions, who were not eyewitnesses, could not have testified on the rape and killing of the victim. In any event, the prosecution has the prerogative to determine who should be presented as witnesses on the basis of its own assessment of their necessity.[22]

While there is some initial merit in the accused's argument that no inference that he was the rapist-killer could be drawn from the fact (a) that he was the last person seen following the victim and (b) that he suspiciously walked away from the scene of the crime, nevertheless, he overlooks that these were only among the indicia which the trial court considered in handing down its decision. The theory of circumstantial evidence is that indicia that are separately of little importance may, by their concordant combination and cumulative effect, satisfy the legal requirements.[23] It may further be noted that the accused did not in fact go home "to rest on his own bed," if such was the reason why he walked away as he claims. He overlooked his testimony on cross-examination that after drinking one bottle of gin and one bottle of beer, he slept "[w]est of the church," and after waking up he wandered about the plaza again and it was only at 6:00 o'clock in the morning that he "started to go home." [24]

Nor is there merit in the accused's contention that Exhibit "F," the biology report of the NBI forensic chemist, is inadmissible in evidence as hearsay because the NBI expert was not presented in court. In the prosecution's Formal Offer of Evidence,[25] Exhibit "F" was specifically offered to prove that the dress of the victim and the pants and t-shirt of the accused were positive for human blood, and that the deceased had struggled with the accused before her death. This exhibit was not objected to by the accused on the ground that it is hearsay in his comments or objections[26] to the prosecution's Formal Offer of Evidence. Therein, he merely stated:

"Exh. "F"

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The existence of this exhibit is admitted. The purpose for which the same was offered is strongly objected to, to the effect that there is no link at all nor be inferred that the accused is the perpetrator of the crime."

Every objection to the admissibility of evidence shall be made at the time such evidence is offered, or as soon thereafter as the ground for objection shall have become apparent, otherwise the objection shall be considered waived.[27] Moreover, the bloodstains on the pants of the accused were testified to by Dr. Wilma Flores-Peralta[28] and Mayor Domingo Madrid.[29]

Finally, the presence of scratches on his neck and arms was not satisfactorily explained by the accused. Taken together with the other circumstances present here, this fact serves to buttress the prosecution's case.

We thus fully agree with the trial court on the sufficiency of the circumstantial evidence in this case. Section 4, Rule 133 of the Rules of Court provides that circumstantial evidence is sufficient for conviction if:

"(a)

There is more than one circumstance;

(b)

The facts from which the inferences are derived are proven; and

(c)

The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.”

Or, as jurisprudentially formulated, a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person, i.e., the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[30] We do not hesitate to rule that all the requisites of Section 4, Rule 133 of the Rules of Court are present in this case.

Against the proven facts and the fair, reasonable, and logical inferences derived therefrom, the accused has nothing to offer but denial and alibi.

It is settled that for alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove that he was somewhere else when the crime was committed, but he must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime at the time the same was committed.[31] In this case, the place where the accused claims to be[32] is more or less ten meters away from the scene of the crime (a ricefield in Barangay Pogombo).[33] Furthermore, the place where he was questioned by Mayor Madrid of Aguilar and apprehended by the police authorities is twenty meters away from the place where the naked body of the victim was found.[34] Hence, the physical impossibility of the accused’s presence at the crime scene, which is necessary in order that the defense of alibi may be considered, is lacking.

The accused committed a heinous crime. He was not content with unleashing his bestial lust upon the tender and frail body of a 10-year-old girl; he also brutally inflicted upon her severe injuries which caused her untimely demise. Another life was lost because a beast in a man’s clothing was on the loose. He must pay for what he did in prison, a place which, unfortunately, is definitely much better than what he truly deserves.

WHEREFORE, the instant appeal is DISMISSED and the challenged decision of Branch 37 of the Regional Trial Court of Lingayen, Pangasinan, in Criminal Case No. L-4227 is hereby AFFIRMED in toto, with costs against the accused-appellant Eduardo dela Cruz y Laoang.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Original Records (OR), 33-34; Rollo, 4-5.

[2] OR, 40.

[3] Id., 113-120 Rollo, 26-33. Per Judge Nicodemo T. Ferrer.

[4] Rollo, 70-87.

[5] Rollo, 74-80.

[6] TSN, 14 March 1991, 19.

[7] Exhibit “1”; OR, 14; TSN, 31 July 1991, 2.

[8] TSN, 31 July 1991, 3-11.

[9] OR, 118-119.

[10] OR, 119.

[11] Appellant’s Brief, 12-13.

[12] Appellant’s Brief, 14.

[13] Id., 16.

[14] People vs. Santito, 201 SCRA 87 [1991]; People vs. Garcia, 209 SCRA 164 [1992].

[15] People vs. Florida, 214 SCRA 227 [1992]; People vs. Matrimonio, 215 SCRA 613 [1992].

[16] Rollo, 84.

[17] TSN, 31 July 1991, 5.

[18] Id., 6.

[19] People vs. Simon, 209 SCRA 148 [1992].

[20] TSN, 14 March 1991, 20.

[21] TSN, 9 May 1991, 5.

[22] People vs. Fernandez, 186 SCRA 830 [1990]; People vs. Mandapat, 196 SCRA 157 [1991]; People vs. Carpio, 207 SCRA 569 [1992] People vs. Collantes, 208 SCRA 853 [1992].

[23] People vs. Viernes, unreported, 99 Phil. 1045 [1956].

[24] TSN, 31 July 1991, 24-26.

[25] OR, 103-105.

[26] Id., 106.

[27] Abrenica vs. Gonda, 34 Phil. 739 [1916]; see Sections 35 and 36, Rule 132, Rules of Court.

[28] TSN, 4 April 1991, 7.

[29] TSN, 14 March 1991, 14; 16.

[30] People vs. Tiozon, 198 SCRA 368 [1991].

[31] People vs. Penillos, 205 SCRA 546 [1992]; People vs. Dela Cruz, 207 SCRA 632 [1992]; People vs. Casinillo, 213 SCRA 777 [1992]; People vs. Florida, supra.

[32] TSN, 31 July 1991, 5-7; 23-25.

[33] TSN, 14 March 1991, 15.

[34] Id., 13.

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